

The following additional info. might be useful regarding the recent Softbank - Sprint merger in which Clearwire was robbed of it's (own) control of \$22B spectrum holdings as a result of the aforementioned merger:

<http://www.wohlfruchter.com/cases/clwr>

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Clearwire Corporation

We are investigating the acquisition by Sprint Nextel Corporation (Sprint) of majority voting control of Clearwire Corporation (Clearwire) (NASDAQ: CLWR) through a negotiated purchase from Eagle River Holdings, LLC (ERH).

On October 15, 2012, Softbank Corp. announced its agreement to buy a 70% ownership stake in Sprint. According to news reports, one of the conditions imposed by Softbank's lenders was that Sprint obtain voting control of Clearwire.

On October 17, 2012, Sprint disclosed that it had agreed to acquire most of ERH's ownership interest in Clearwire, thereby increasing its voting power from approximately 48% to above 50%. Completion of the purchase is subject to the first offer rights of certain other shareholders under a 2008 equityholders' agreement.

Our investigation concerns whether Sprint's agreement with ERH is consistent with the duties it owes to unaffiliated shareholders of Clearwire, and whether Clearwire's board of directors has fulfilled its fiduciary obligations in response to Sprint's announced acquisition of majority voting control.

Persons with relevant information, and Clearwire shareholders with questions about this investigation, are invited to contact our Firm by calling 866.582.8140, or contact the attorney below.

Contact

Ethan Wohl

212.758.4097

ewohl@wohlfruchter.com "

and from the Yahoo MB:

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Re: Crest Financial

By starcraft_1998.Nov 7, 2012 2:34 AM.[Permalink](#)[Go to topic](#)

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November 6, 2012

VIA FACSIMILE AND COURIER

Mr. Jonathan Fiorello
Chief Operating Officer
Mount Kellett Capital Management LLP
623 Fifth Avenue
18 Floor
New York, New York 10022

Dear Mr. Fiorello:

Crest Financial Limited ("Crest"), a Houston-based investment company, is a long-term investor in Clearwire Corporation (the "Company"). Crest, with its affiliates, currently owns 45,756,898 Class A shares of the Company, or approximately 6.62 percent of the Company's outstanding Class A stock.

We have read the November 1, 2012 letter that you sent to the Company. Crest also has been monitoring the recent developments associated with the Plan of Merger and Agreement ("Merger Agreement") between Sprint Nextel Corporation ("Sprint"), the Company's dominant shareholder, and

Softbank Corporation ("Softbank"). It appears that the Softbank-Sprint merger may not be in the Company's best interest and may threaten the interests of the Company's minority shareholders. Your letter expressed many of the concerns we have in this regard, and we commend you for sending it.

By way of background, Crest and its affiliates have a long history of investing in the spectrum that Clearwire currently holds. In 1996, the FCC awarded to Digital & Wireless, a Crest affiliate, licenses providing rights to frequencies in 19 markets in a BTA auction. In June of 2004, Clearwire Corporation, then still a privately-held corporation, acquired these licenses from Digital & Wireless. As part of the consideration for this sale, Crest received a significant number of Clearwire Corporation shares. Since that sale, Crest and its affiliates have continued to purchase shares in Clearwire, thus evidencing our belief in the value of Clearwire's assets and, just as important, Clearwire's business plan for monetizing these assets.

Unfortunately, the Company finds itself with insufficient capital to build out its facilities to realize the full value of the spectrum capacity that it holds. Like you, Crest would expect that, if the members of the Company's Board were intent on discharging their fiduciary duties, they would take immediate action to bolster the Company's liquidity.

In addition to the sale of excess spectrum that you proposed in your letter, Crest believes that immediate steps to raise capital through the offering and sale of additional common shares would be among the steps a board of directors, acting in the best interests of all shareholders, would pursue. Proceeds from such an offering, together with proceeds from the sale of a portion of the Company's excess spectrum to a third party or parties, would ensure a successful build-out of the Company's network and bolster the Company's position as it renegotiates the lease of its spectrum to Sprint. And the additional and immediate network investment facilitated by a successful share offering would likely increase the value of Clearwire's assets and thus the sale price for any excess spectrum.

It is Crest's view that this sale of additional shares can be done quickly and successfully for the good of the Company, its shareholders and the public at large. Indeed, Crest would consider participating in such an offering.

There are a number of reasons why a public offering and sale of shares, in addition to the sale of its excess spectrum, should be pursued. First, the value of the Company's assets, which the Softbank-Sprint proposal and the Company's own disclosures confirm, would easily support such an offering. Second, the proceeds from the sale of shares would provide the Company with the capital necessary to push ahead with its build-out strategy during the period it is working to complete its sale of excess spectrum. Third, raising capital from investors other than the dominant shareholder, or at least pro rata with it, would prevent what has amounted to a creeping tender offer that Sprint has said is its

intention with regard to the Company - to wit, the buying of shares of strategic investors whenever it gets a chance. Finally, the Company has recently experienced success in raising capital, specifically through sales of its common shares to the public utilizing its Sales Agreement with Cantor Fitzgerald & Company. There is no reason why these efforts should not continue. Indeed, it is unclear why the Company abruptly ended that arrangement near the end of July notwithstanding the success CF&Co. experienced in selling the Company's common shares under that arrangement.

Crest also is concerned that recent actions (or inactions) of the Company's Board may not be in the best interests of either the Company or its minority shareholders. Like you, we also expect that the members of the Company's Board will continue to perform the fiduciary duties that each owes to the Company and its shareholders. Crest is concerned that Softbank and Sprint are positioning themselves to obtain the exclusive benefit from the Company's valuable spectrum and assets through the Merger Agreement at the expense and to the detriment of the Company and its minority shareholders. While Sprint acquired enough shares to further cement its control of the Company (50.8%) just days after the Merger Agreement was announced, Sprint and Softbank have stated publicly that their transaction "does not require Sprint to take any actions involving Clearwire other than those set forth in agreements Sprint has previously entered into with Clearwire and certain of its shareholders." Odder still is the value placed on the shares purchased by Sprint in that transaction: \$2.00 per share of Class A stock and \$13.98 per share of Class B stock. The Class A shares were valued at their original price. But the Class B shares received a significant premium; Class B shares were issued at \$7.33 per share. We think this higher valuation for the Class B shares is intended to unfairly benefit Class B shareholders and at the expense of Class A shareholders, including Crest and you.

In light of this, Crest believes that compliance with its fiduciary duties under these circumstances would require a properly functioning Board to take a variety of actions to mitigate the danger of Sprint improperly using its status as the controlling shareholder to oppress the rights and economic position of minority shareholders. For example, it could assess the impact on the Company and its public shareholders of the Softbank-Sprint merger as well as subsequent events and public statements, review all other dealings with Sprint, and establish defensive measures to enhance the ability of independent directors to ensure full value for minority shareholders. One area of inquiry could be the Equity holders Agreement of 2008 and, specifically, the standstill agreement that prohibits Sprint from "any direct or indirect acquisition of any Common Stock." The standstill agreement contains an exception to protect minority shareholders--namely, that Sprint can only make an offer for 100 percent of the Company's shares, and only if the offer is approved by independent, unaffiliated members of the Company's Board and by a majority of minority voting shares.

Any or all of these steps would strengthen the Board's ability to prevent any future offer by Sprint to purchase the Company or its assets at a distressed or undervalued price.

From day one, Crest has seen its investment in the Company as a way to facilitate the completion of a world-class network that could challenge the extant duopoly in the wireless communications industry, bring real competition and innovation to the marketplace, and benefit consumers of mobile telecommunications. These goals, which we are sure will be the focus of the Federal Communications Commission's approval process, can be achieved only if the Company's spectrum and assets are managed for the benefit of all stakeholders and not just for shareholders with temporary or untoward advantage and dominance.

We believe that, properly managed, the Softbank-Sprint merger proposal presents an opportunity to benefit not only the interests of all shareholders, but also the public interest. Improperly managed, the merger could harm minority shareholders and the public at large. Crest will continue to monitor the Company's progress and is eager to engage the Company on any relevant matters.

Thank you.

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McCaw's "make whole" clause is "breach of fiduciary" duty because

By nivegulu.Nov 6, 2012 2:00 PM.Permalink

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1. ERH assumes implicitly that there can be no other third party that may be interested in acquiring clwr in the future except for S/SB. This is itself very presumptuous and myopic in nature.
2. If there were any other 3rd party who would be interested in the future "this stake sale by McCaw would enable S/SB gain enough control so as to block them out. This is monopolistic and anti-competetive.

3. Notwithstanding any future 3rd party bids, I i.e.(McCaw's ERH) don't give a da** attitude, and "I'll run with what I get now", and in case if the pps of clwr goes up over time in the next 3 years "I'll be made whole". This is callous (neglect) to the common Class A shareholders to say the least.

4. Misuse of their own position (S/SB) by virtue of being clear's largest client. McCaw knew that this offer to buy his stake was tainted because of S's power over clwr and he could have refused or simply said "make me whole now" at a pps that reflected the true spectrum value of clear. Anything else amounts to collusion with S/SB to sell the common Class A short of enterprise value.

Sentiment: Strong Buy

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Today's letter from Mount Kellett to Clearwire Board

By thekindaguyiyam. Nov 4, 2012 2:13 PM. [Permalink](#)

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Sunday, 04 November 2012

Mount Kellett Capital Management LP ("Mount Kellett") today sent a letter to the Clearwire Corporation (NASDAQ: CLWR) ("Clearwire") Board of Directors outlining issues related to, among other things, Clearwire's relationship with Sprint Nextel Corporation (NYSE: S). Full text of the letter follows:

November 1, 2012

Clearwire Corporation
1475 120th Avenue NE

Bellevue, WA 98005
Attn: Board of Directors

Dear Ladies and Gentlemen:

Mount Kellett Capital Management LP ("Mount Kellett" or "we") is a multi-strategy private investment firm focused on global value, special situations and opportunistic investing. Mount Kellett and funds and accounts under common control collectively have beneficial ownership in Clearwire Corporation ("Clearwire" or the "Company") of 53.2 million shares (the "Shares"), or approximately 7.3%, of the Company's outstanding voting stock not controlled by SprintNextel Corp. ("Sprint"), pro-forma for Sprint's acquisition of shares from Eagle River Holdings ("Eagle River").

Mount Kellett acquired the Shares for investment purposes because we considered, and continue to consider, Clearwire's stock to be substantially undervalued. We believed (and continue to believe) that the Company has significant upside potential as a wireless broadband network operator given its spectrum holdings and the growth in high-speed wireless demand in the U.S.

As a significant stockholder, we have been carefully monitoring the recent events relating to Sprint's agreement to acquire outright control of Clearwire through its acquisition of shares from Eagle River and the resulting right of Sprint to designate a majority of the Board of Directors of Clearwire's board of directors (the "Board"), none of which designees are required any longer to be independent.

This development is particularly significant given that the Company's build-out program has an estimated funding gap of over \$1 billion. Based on the disclosed run rate of expenditures, we believe that Clearwire has only enough cash to continue its build-out for approximately 1 year. Perhaps not coincidentally, the standstill agreement applicable to Sprint that, among other things, prohibits it from acquiring 100% of the outstanding common stock of the Company unless the acquisition has been approved by a majority of both the board of directors and stockholders of Clearwire that are unaffiliated with Sprint, expires at approximately the same time that the Company's funds are currently expected to run out.

In our view, the Board - each of the members of which owes his or her fiduciary duties to ALL of the stockholders, not just the stockholder that nominated him or her - has an obligation to take all steps to insure that the Company has adequate cash resources to complete its build-out program and not to allow the Company to reach a point where the only alternative presented is Sprint's acquisition of Clearwire at a price that reflects the Company's unnecessary distress rather than the full value the stockholders could achieve if the build-out is finished or is clearly capable of being finished.

How can the Board assure that the Company has adequate financial resources? To us, the answer is

obvious: sell excess spectrum. Based on statements by the Company's CFO on its 4Q11 conference call, "I think 80 megahertz to 100 megahertz is what we needâ€but we've got 160 megahertz, so we definitely have some room", the Company owns on average at least 60 - 80 MHz of excess spectrum capacity within its footprint, when spectrum is in short supply and commands premium prices. Based on our analysis of the most recent comparable spectrum transaction, AT&T's purchase of NextWave, we believe Clearwire's spectrum to be worth at least \$0.38 MHz POP based on the implied price for useable spectrum held by NextWave. NextWave was a distressed seller that was in default on its debt agreements. Using this distressed sale benchmark at \$0.38 MHz POP of useable spectrum, we estimate the Company could generate gross proceeds of \$6 - \$9 billion if it sold all of its excess spectrum, an amount that exceeds the current enterprise value of the Company. Assuming the sale of only a substantial portion but not all, Clearwire's liquidity issues would be resolved.

Once the Company's liquidity situation is resolved, not only will the value of the Company's remaining spectrum be properly highlighted, but also the Company will have a multitude of options on how to proceed. Accelerating demand will drive a continuing increase in the value of the spectrum and - absent the turmoil Sprint helped create for the Company the last time a wholesale contract was negotiated- we believe the Company will be able to command a premium price for its wholesale services, if not from Sprint, then from others interested in its capacity. Demand for data continues to increase. The recently released CTIA Wireless Semi-Annual Wireless Industry Survey shows twelve-month data traffic grew at 104% year-over-year. This reinforces our belief that data usage is growing at a rate that far exceeds spectrum supply.

While spectrum values continue to increase, Clearwire faces a liquidity need now that must be met. The Company's 2011 MVNO agreement with Sprint clearly defines Excess Capacity and Clearwire's ability to sell, transfer, license, lease or otherwise dispose of excess spectrum. Holding on to excess spectrum and letting that value accrue to Sprint, so that Sprint can purchase the Company's excess spectrum cheaply would be an egregious violation of stockholder interests. We believe that the Board should immediately hire an investment bank and task it with running a sales process to sell a substantial portion of the Company's excess spectrum to the highest bidder or bidders. We recommend the Board be very firm when setting the rules of an auction. We will take any attempt by Sprint to chill an auction process very seriously. In fact, we believe the Board should make it clear to any potential buyer of assets that Sprint will not be allowed to participate. Should the Board fail to take the necessary steps and find itself needing to capitulate to a distressed sale, we will have no choice but to consider whether the Board has the best interest of the Company and ALL of its stockholders in mind or only those of its controlling stockholder. In that event, we will consider all available options to prevent or redress the destruction of stockholder value.

We are also forced to note the recent public statements by Sprint CEO Dan Hesse of his desire to acquire additional share blocks: "Any time there's an opportunity at the right price to take out a

strategic investor, we will," As the Board undoubtedly knows, the standstill agreement that Sprint is subject to prohibits, among other things, "in any manner directly or indirectlyâ€solicit[ing], negotiat[ing] with or enter[ing] into any agreement with any third partyâ€or mak[ing] any public announcement of its intention or desire to do so" with respect to the acquisition of additional stock. Does the Board intend to allow Sprint to continue what may amount to a creeping tender offer in this manner? Sprint should declare its intentions publicly one way or the other - either commit to not continuing to amass more stock and relinquish its board seats, or make a tender offer to all stockholders to allow them to evaluate the offer and the future of the Company under Sprint's control. If the Board instead does nothing and Sprint ultimately acquires the Company at a bargain price, we intend to consider all available measures to hold both the Board and Sprint and its affiliates responsible for any losses inflicted upon the public stockholders as a result.

Moreover, given Sprint's newly solidified position as the controlling party of Clearwire, the intertwined business arrangements between the two companies and the potential conflict between the interests of Sprint and those of the public stockholders of Clearwire, we believe that any transaction between Clearwire and Sprint should be subject to a very high standard. As evidence of Sprint's desire to exploit Clearwire as a subsidiary, Dan Hesse stated on the October 15, 2012 call regarding Softbank's investment in Sprint "the two companies will utilize both FD-LTE and TD-LTE." It is our understanding that as currently configured, Sprint does not have the spectrum depth or capacity to offer both a FD and TD network without Clearwire. We urge the Board to commit to submit any material transaction to a vote of the stockholders unaffiliated with Sprint so that the stockholders can determine for themselves if the transaction is at arm's length, on reasonable terms and in the best interest of Clearwire. If the Board refuses to do so, be aware that the public stockholders of the Company, including Mount Kellett, will be carefully scrutinizing any and all such transactions to make those determinations and avail themselves of all appropriate actions to prevent or redress any wrongdoing.

We are hopeful that the Board already recognizes its duties, and that the Board can and will do the right thing. We are available, as always, to discuss issues relevant to Clearwire at your convenience.

Very truly yours,

MOUNT KELLETT CAPITAL MANAGEMENT LP

By:/s/

Name: Jonathan Fiorello

Title: Chief Operating Officer

About Mount Kellett Capital Management LP

Mount Kellett is a multi-strategy private investment firm focused on global value, special situations and opportunistic investing. The firm has approximately 115 employees with offices in New York, Dallas, Hong Kong, London, and Mumbai. The firm currently has in excess of \$7 billion in assets under management.

Sentiment: Strong Buy